

1 TOMIO B. NARITA (SBN 156576)
tnarita@snllp.com
2 LINDSEY A. MORGAN (SBN 274214)
lmorgan@snllp.com
3 SIMMONDS & NARITA LLP
4 44 Montgomery Street, Suite 3010
San Francisco, CA 94104-4816
Telephone: (415) 283-1000
5 Facsimile: (415) 352-2625

6 Attorneys for defendant
7 Midland Credit Management, Inc.

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE COURTHOUSE
12

13 GINO PASQUALE,

14 Plaintiff,

15 vs.
16

17 MIDLAND CREDIT
18 MANAGEMENT, INC., a
corporation, and DOES 1 THROUGH
19 10, inclusive,

20 Defendant(s).
21
22
23
24
25
26
27
28

CASE NO.

CV 12-5960

PSG

NOTICE OF REMOVAL

Filed

NOV 21 2012

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

480

#99

Les Paul mp.

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE that defendant Midland Credit Management, Inc.
3 ("Defendant"), a Delaware Corporation, hereby removes to this Court the state
4 court action described below.

5 1. On October 18, 2012, a complaint was filed against Defendant by
6 plaintiff Gino Pasquale ("Plaintiff"), in an action pending in the Superior Court of
7 the State of California in and for the County of Santa Clara, entitled *Gino Pasquale*
8 *v. Midland Credit Management, Inc.*, Case No. 112 CV 234543. A copy of the
9 state court Summons and Complaint and the Civil Case Cover Sheet (collectively,
10 "Complaint") that was served on Defendant is attached hereto as **Exhibit A**.

11 2. This removal petition is timely under 28 U.S.C. § 1446(b) because
12 Defendant was served on October 22, 2012.

13 14 JURISDICTION

15 3. This action is a civil action of which this Court has original
16 jurisdiction under 28 U.S.C. § 1331 and which may be removed to this Court by
17 Defendant pursuant to the provisions of 28 U.S.C. § 1441(b) in that the Complaint
18 asserts claims against Defendant allegedly arising under 15 U.S.C. § 1681 *et seq.*
19 (the "Fair Credit Reporting Act"). See Exhibit A, Complaint, ¶¶ 1-3, 8.

20 4. As the Complaint was filed in the Superior Court of the State of
21 California, County of Santa Clara, venue in this District is proper. See 28 U.S.C. §
22 1441(a) (providing for removal "to the district court of the United States for the
23 district and division embracing the place" where the state court action is pending);
24 28 U.S.C. § 84(a) (Northern District comprises, *inter alia*, the county of Santa
25 Clara).

26 5. Defendant is represented by the undersigned.

27 //

28 //

1 DATED: November 21, 2012

SIMMONDS & NARITA LLP
MICHAEL R. SIMMONDS
LINDSEY A. MORGAN

2
3
4 By: 

5 _____
6 Lindsey A. Morgan
7 Attorneys for defendant
8 Midland Credit Management, Inc.
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

MIDLAND CREDIT MANAGEMENT, INC AND DOES 1-10

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

GINO PASQUALE

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

(ENDORSED)

OCT 18 2012

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara

S. Smith
DEPUTY

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web Site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA, DOWNTOWN SUPERIOR COURT
191 NORTH FIRST STREET SAN JOSE, CA 95113

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es): Samuel Henderson, 2182 El Camino Real Suite 202 Oceanside, CA 92054; (760) 575-4594

DATE:
(Fecha)

Clerk, by
(Secretario)

DAVID H. YAMASAKI
Chief Executive Officer/Clerk

S. Smith
Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): MIDLAND CREDIT MANAGEMENT, INC

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)

- ☐ other (specify):

4. ☒ by personal delivery on (date): 10-22-12

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Samuel Henderson (SBN 279717) Henderson Consumer Law 2182 El Camino Real Suite 202 Oceanside, CA 92054 TELEPHONE NO.: (760) 575-4594 FAX NO.: (760) 688-3732 ATTORNEY FOR (Name): Gino Pasquale		FOR COURT USE ONLY (ENDORSED) FILED OCT 18 2012 DAVID H. YAMASAKI Chief Executive Officer/Clerk Superior Court of CA County of Santa Barbara BY <u>S. Smith</u> DEPUTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 191 North First Street MAILING ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose 95113 BRANCH NAME: Downtown Superior Court		
CASE NAME: Gino Pasquale v. Midland Credit Management, Inc.		
CIVIL CASE COVER SHEET <input type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input checked="" type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
		CASE NUMBER: 112CV234543 JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/DPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/DPD/WD (23) Non-P/DPD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input checked="" type="checkbox"/> Other non-P/DPD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	---

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 4: FCRA, CCRAA violations
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 10/11/12
 Samuel Henderson

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex: if a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort Auto (22)—Personal Injury/Property Damage/Wrongful Death Uninsured Motorist (46) <i>(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)</i> Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort Asbestos (04) Asbestos Property Damage Asbestos Personal Injury/Wrongful Death Product Liability <i>(not asbestos or toxic/environmental)</i> (24) Medical Malpractice (45) Medical Malpractice— Physicians & Surgeons Other Professional Health Care Malpractice Other PI/PD/WD (23) Premises Liability (e.g., slip and fall) Intentional Bodily Injury/PD/WD (e.g., assault, vandalism) Intentional Infliction of Emotional Distress Negligent Infliction of Emotional Distress Other PI/PD/WD Non-PI/PD/WD (Other) Tort Business Tort/Unfair Business Practice (07) Civil Rights (e.g., discrimination, false arrest) <i>(not civil harassment)</i> (08) Defamation (e.g., slander, libel) (13) Fraud (16) Intellectual Property (19) Professional Negligence (25) Legal Malpractice Other Professional Malpractice <i>(not medical or legal)</i> Other Non-PI/PD/WD Tort (35) Employment Wrongful Termination (36) Other Employment (15)	Contract Breach of Contract/Warranty (06) Breach of Rental/Lease Contract <i>(not unlawful detainer or wrongful eviction)</i> Contract/Warranty Breach—Seller Plaintiff <i>(not fraud or negligence)</i> Negligent Breach of Contract/Warranty Other Breach of Contract/Warranty Collections (e.g., money owed, open book accounts) (09) Collection Case—Seller Plaintiff Other Promissory Note/Collections Case Insurance Coverage <i>(not provisionally complex)</i> (18) Auto Subrogation Other Coverage Other Contract (37) Contractual Fraud Other Contract Dispute Real Property Eminent Domain/Inverse Condemnation (14) Wrongful Eviction (33) Other Real Property (e.g., quiet title) (26) Writ of Possession of Real Property Mortgage Foreclosure Quiet Title Other Real Property <i>(not eminent domain, landlord/tenant, or foreclosure)</i> Unlawful Detainer Commercial (31) Residential (32) Drugs (38) <i>(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)</i> Judicial Review Asset Forfeiture (05) Petition Re: Arbitration Award (11) Writ of Mandate (02) Writ—Administrative Mandamus Writ—Mandamus on Limited Court Case Matter Writ—Other Limited Court Case Review Other Judicial Review (39) Review of Health Officer Order Notice of Appeal—Labor Commissioner Appeals	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403) Antitrust/Trade Regulation (03) Construction Defect (10) Claims Involving Mass Tort (40) Securities Litigation (28) Environmental/Toxic Tort (30) Insurance Coverage Claims <i>(arising from provisionally complex case type listed above)</i> (41) Enforcement of Judgment Enforcement of Judgment (20) Abstract of Judgment (Out of County) Confession of Judgment <i>(non-domestic relations)</i> Sister State Judgment Administrative Agency Award <i>(not unpaid taxes)</i> Petition/Certification of Entry of Judgment on Unpaid Taxes Other Enforcement of Judgment Case Miscellaneous Civil Complaint RICO (27) Other Complaint <i>(not specified above)</i> (42) Declaratory Relief Only Injunctive Relief Only <i>(non-harassment)</i> Mechanics Lien Other Commercial Complaint Case <i>(non-tort/non-complex)</i> Other Civil Complaint <i>(non-tort/non-complex)</i> Miscellaneous Civil Petition Partnership and Corporate Governance (21) Other Petition <i>(not specified above)</i> (43) Civil Harassment Workplace Violence Elder/Dependent Adult Abuse Election Contest Petition for Name Change Petition for Relief From Late Claim Other Civil Petition
--	--	---

1 Samuel Henderson (SBN: 279717)
2 2182 El Camino Real, Suite 202
3 Oceanside, CA, 92054
4 (760) 575-4594
5 (760) 688-3732
6 henderson@hendersonconsumerlaw.com

7
8 Attorney for Plaintiff,
9 Gino Pasquale

(ENDORSED)
FILED
OCT 18 2012

DAVID H. YAMASAKI
Chief Executive Officer/Bank
Superior Court of CA County of Santa Clara
BY DEPUTY
S. Smith

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA, DOWNTOWN DIVISION

112CV234543

PASQUALE, GINO

Plaintiff,

vs.

MIDLAND CREDIT MANAGEMENT, INC, a
corporation, and DOES 1 THROUGH 10,
inclusive.

Defendant(s).

LIMITED CIVIL CASE

COMPLAINT FOR:

- VIOLATIONS OF THE FCRA
- VIOLATIONS OF THE CCRAA

DEMAND OF LESS THAN \$10,000

///

///

///

///

///

///

///

///

1 Plaintiff Gino Pasquale ("Plaintiff") alleges against Defendant Midland Credit Management,
2 Inc. ("MCM") and DOES 1 through 10 (collectively, "Defendants") as follows:

3 1. Plaintiff is an individual consumer and is, at all times mentioned in this Complaint, a
4 resident of Santa Clara County, California.

5 2. Defendant MCM is a Kansas corporation and is located at 3111 Camino Del Rio
6 North, Suite 1300, San Diego California 92108.

7 3. The true names and capacities, whether individual, corporate, association, or
8 otherwise of Defendants named herein as DOES 1 through 10 are unknown to Plaintiff who
9 therefore sues said Defendants by such fictitious names. Plaintiff will seek leave to amend this
10 Complaint to allege their true names and capacities when the same have been ascertained. Plaintiff
11 is informed and believes that each of the fictitiously named Defendants and/or their agents and
12 employees are responsible in some manner for the events and happenings alleged in this Complaint,
13 and proximately caused Plaintiff's damages.

14 4. At all times herein mentioned, upon information and belief, Defendants were the
15 agents, servants, and/or employees of their co-Defendants and Defendants' acts shall mean that
16 Defendants did the acts alleged through their officers, directors, managers, agents, representatives
17 and/or employees while they were acting within the course and scope of said agency, authority, and
18 employment.

19 5. At all relevant times, Plaintiff is a consumer as defined by the Fair Credit Reporting
20 Act ("FCRA") and the California Consumer Credit Reporting Agency Act ("CCRAA").

21 6. At all relevant times Plaintiff's file is considered a consumer report under the FCRA
22 and a consumer credit report under the CCRAA.

23 7. This action has been commenced in the proper Court and Judicial District because
24 Defendants engage in business here, the Plaintiff resides here, and the liability was incurred here.

25 **BACKGROUND**

26 8. Plaintiff, on or around, June 30, 2012, received a copy of his consumer credit report
27 from the Credit Reporting Agency TransUnion, LLC.

1 9. Plaintiff is informed and believes and based thereon alleges that on January 19, 2012
2 Defendant MCM knowingly and willfully obtained access to and data from plaintiff's file. The
3 allegedly permissible purpose was listed as "COLLECTION".

4 10. On information and belief, and on that basis Plaintiff alleges that Defendant MCM
5 and Transunion, LLC, had an agreement that allowed MCM access to credit report data for the
6 purposes of debt collection.

7 11. Plaintiff, on or around August 3, 2012, contacted MCM in order to determine what
8 alleged account they had that would allow them to obtain Plaintiff's credit report. MCM's agent
9 was unable to locate any information on the Plaintiff.

10 12. Concerned with his privacy and MCM's lack of information, Plaintiff contacted
11 Samuel Henderson, Plaintiff's counsel in this case, and asked Mr. Henderson to investigate.

12 13. Plaintiff's counsel sent MCM a letter on or around August 20, 2012 inquiring about
13 MCM's permissible purpose in pulling Plaintiff's credit report. MCM responded on or around
14 August 24, 2012 and claimed a permissible purpose under section 604(a)(3)(e). MCM claimed the
15 pull was done as part of a "potential investment".

16 14. Finding the above information inadequate to determine whether there was a
17 permissible purpose, Plaintiff's counsel again sent MCM a letter on or around August 27, 2012
18 requiring further information such as the alleged assignor or account information. MCM replied
19 claiming they did not have enough information on Plaintiff to properly search their files.

20 15. In response to MCM's second letter, Plaintiff's counsel sent a third letter which
21 contained all the previously disclosed information that allowed MCM to state they pulled due to a
22 "potential investment". On or around September 12, 2012, MCM replied and claimed that it was
23 for a "review or collection" on behalf of an affiliate "Current Owner."

24 16. Because of the conflicting reasons given, Plaintiff was unable to discover any
25 permissible purpose. In order to thoroughly try to exhaust all possibilities, Plaintiff's counsel called
26 MCM and spoke with an agent on multiple occasions. Plaintiff's counsel provided Plaintiff's full
27 social security number as the MCM agent claimed they could only search using the full number.
28

1 MCM's agent was once again unable to show that MCM had any account of Plaintiff's, or had
2 invested in or was considering in investing in any account of Plaintiff's.

3 **FIRST CAUSE OF ACTION**

4 **VIOLATION OF THE FAIR CREDIT REPORTING ACT 15 U.S.C. § 1681 et seq.**

5 17. Plaintiff realleges and incorporates the foregoing paragraphs as were set forth at
6 length herein.

7 18. At all times pertinent hereto MCM was a "person" as that term defined by 15 U.S.C.
8 § 1681a(b).

9 19. MCM violated sections 1681n and 1681o of the FCRA by willfully and negligently
10 failing to comply with the requirements imposed on users of information pursuant to 15 U.S.C.
11 §1681b.

12 20. As a result of Defendant's violations, Plaintiff has suffered damages.

13 **SECOND CAUSE OF ACTION**

14 **VIOLATION OF THE CALIFORNIA CONSUMER CREDIT REPORTING**

15 **AGENCY ACT, CIVIL CODE §1785 et seq**

16 21. Plaintiff realleges and incorporating the foregoing paragraphs as were set forth at
17 length herein.

18 22. Defendant violated the Civ. Code §1785.11 and §1785.19 by negligently and
19 willfully gaining access to Plaintiff's consumer credit report or the data that it contained when they
20 did not have a permissible purpose as defined by the statute.

21 23. Upon information and belief, Defendant violated Civ. Code §1785.11 and
22 §1785.19(a)(3) by using the data obtained in a manner contrary to Defendant's agreement with
23 TransUnion.

24 24. As a result of these violations, Plaintiff has suffered damages.

25 **PRAYER FOR RELIEF**

26 **WHEREFORE**, Plaintiff demands judgment against Defendants as follows:

27 1. Actual damages in an amount to be determined at trial;
28

1 2. Statutory damages in the amount of \$1,000.00 for violations of the Fair Credit
2 Reporting Act in accordance with 15 U.S.C. §1681n.

3 3. Statutory damages in the amount of \$2,500.00 for violations of the California
4 Consumer Credit Reporting Agency Act in accordance with Civ. Code §1785.19 for impermissibly
5 accessing Plaintiff's consumer report and data.

6 4. Statutory damages in the amount of \$2,500.00 for violations of the California
7 Consumer Credit Reporting Agency Act in accordance with Civ. Code §1785.19(a)(3) for using
8 data obtained in a manner contrary to Defendant's agreement with the Credit Reporting Agency.

9 5. Interest, if applicable;

10 6. Attorney's fees;

11 7. Costs; and,

12 8. Any other and further relief that the court considers proper.

13
14 Dated: 10/12/2012

Respectfully submitted,

15
16
17 By 

Samuel Henderson
Attorney for Plaintiff
Gino Pasquale